

In the High Court of Judicature at Madras

Dated: 05.12.2006

Coram:

The Honourable Mr. Justice P. SATHASIVAM
and
The Honourable Mr. Justice S. TAMILVANAN

Writ Petition No. 17164 of 2003

Omender Singh

..Petitioner

..vs..

1. The Union of India,
rep. by the Secretary,
Ministry of Home Affairs,
New Delhi.
2. The Inspector General,
Central Industrial Security Force,
South West Sector,
RCFL Complex,
Mumbai-74.
3. The Deputy Inspector General,
Central Industrial Security Force,
Southern Zone,
D-Block, Rajaji Bhavan,
Besant Nagar,
Chennai-600 090.
4. The Commandant,
CISF Unit,
NLC, Neyveli,
Cuddalore District.

..Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the impugned order of the 2nd respondent in No. V 11014/49/SZ/LC/SWS/02/2379 dated 13.03.2003, confirming the punishment imposed by the order of the third respondent in Order No. V 11014/24/2002/L&R (SZ)/3211 dated 24.04.2002 and quash the same in so far as it imposes the punishment of "reduction of pay by three stages for a period of two years with cumulative effect" on the petitioner.

For Petitioner : Mr.T.N.Sugesh

For Respondents : Mr.C.Krishnan,
SCGSC.,

ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

The petitioner challenges the orders of the respondents dated 24.04.2002 and 13.03.2003, in and by which, the punishment of reduction of pay by three stages for a period of two years with cumulative effect was imposed.

2. Heard the learned counsel for the petitioner as well as the respondents.

3. The following charge was framed against the petitioner; "That CISF No.941402666 Constable Omender Singh CISF Unit NLC Neyveli was allowed to proceed on 20 days Earned Leave with effect from 11.09.2001 and was to resume duty on 3.10.2001(FN) after expiry of leave. The said Omender Singh overstayed on leave for 72 days with effect from 03.10.2001 to 13.12.2001, without information and permission from the competent authority. The said act on the part of Constable Omender Singh amounts to gross misconduct and unbecoming of a member of the Armed Force. Hence the charge". It is not in dispute that a fullfledged enquiry was conducted and ultimately, the Enquiry Officer submitted his report holding the charge proved. The disciplinary authority, after taking note of the fact that the petitioner overstayed for a period of 72 days apart from the permitted leave of 20 days, which amounts to gross misconduct and unbecoming of a member of Armed Force, awarded the penalty of removal from service.

4. Aggrieved by the order of removal, the petitioner preferred an appeal to Inspector General, Central Industrial Security Force (hereinafter referred to as "CISF"), Chennai. The appellate authority after considering various grounds raised, the enquiry proceedings and conclusion of the disciplinary authority, and finding that the punishment of removal from service imposed, is not commensurate with the gravity of the proven charges of 72 days of overstaying, interfered with the order of the disciplinary authority only to the extent of quantum of punishment and modified the same as follows:

"Reduction of pay by three stages for a period of two years. It is further directed that Constable Omender Singh will not earn increments of pay during the period of reduction and that on expiry of the period, the reduction will have the effect of postponing his future increments of pay".

The said order was confirmed by the revisional authority. Not satisfied with the same, the petitioner has filed the present writ petition.

5. Learned counsel for the petitioner submitted that the petitioner had already served the punishment, namely, reduction of pay by three stages for a period of two years. However, according to the learned counsel, the reduction will have the effect of postponing his future increments of pay, which, according to him, is excessive.

6. We are unable to accept the said contention. It is to be noted that the petitioner had proceeded on 20 days leave on getting proper permission. However, thereafter, he overstayed by 72 days. The fact that he had overstayed the leave for a period of 72 days has not been disputed. As rightly observed by the appellate authority, the only reason for his overstayal for a period of 72 days is sickness, for which, he produced a medical certificate. Admittedly, the petitioner had not intimated by way of telegram, as mentioned in the instructions issued by the respondents. It is also not in dispute that call up notices have been sent to the leave address furnished by the petitioner in his leave application. As rightly pointed out, had the petitioner changed his address temporarily for any reason, it is but proper on his part to intimate the same to the authorities. All those relevant aspects have been considered by the appellate authority and finding that the quantum of punishment is excessive, modified the same into reduction of pay by three stages for a period of two years with cumulative effect. Though the learned counsel argued that the said punishment is excessive, as rightly pointed out by the learned counsel for the respondents, as per Sections 8 and 18 of CISF Act, 1968, apart from taking departmental action, the respondents are free to prosecute him for overstayal and if the same is proved, he has to undergo imprisonment for a period of one year. It is pointed out that the respondents are not resorted to such recourse and proceeded by way of departmental enquiry. Taking note of all these aspects and of the fact that the appellate authority had shown leniency considering his grievance, in the absence of any other contra materials, it is not for this Court to interfere with the quantum of punishment.

Accordingly, the writ petition fails and the same is dismissed. No costs.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to the Govt. of India,
Ministry of Home Affairs,
New Delhi.
2. The Inspector General,
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ONE CC TO MR.T.M. SUGESH, ADVOCATE SR 60047

ONE CC TO MR.C. KRISHNAN, SCGSC SR 59958

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RS (CO)

BP/16.12

सत्यमेव जयते

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